IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1969 OF 2007

Shankara Narayan Iyer and anr. ..Petitioners

Vs.

The State of Maharashtra and ors. ..Respondents

Mr. S.T. Waghmode i/by Mr. Rishi Bhuta for petitioners.
Ms. S.V. Gajare, APP for State.
Ms. T.R. Shetty for respondent nos.2 and 3.

CORAM: B.H. MARLAPALLE, J.

Date : October 31, 2007.

P.C.:

1. Heard Mr. Waghmode i/by Mr. Bhuta the learned counsel for the petitioners and Ms. Shetty the learned counsel for respondent nos.2 and 3. Ms. Gajare the learned APP appears for the State.

2. The respondent no.3 - Co-operative Housing Society had lodged an F.I.R. against the petitioners on or about 11/10/2004 for the offences punishable under Sections 406 and 420 read with Section 34 of IPC. Briefly the society's case was that the petitioner no.1 had clandestinely misappropriated

society's funds to the tune of Rs.9,75,000/- by issuing cheques and transferring the said money to his bank account and thus he has cheated the respondent no.3-society of which he was a member and office bearer. The petitioner no.1 was absconding and in the meanwhile the first charge-sheet was filed on 19/3/2005. On 15/4/2007 the petitioner no.1 was taken in custody and an amount of Rs.4,47,620/- was recovered from him. His Bail Application was rejected on 1/6/2007 and prior thereto an additional charge-sheet came to be filed on 5/5/2007.

3. It appears the petitioners opened a dialogue with the complainant-society and agreed to pay the remaining amount to the society i.e. Rs.9,75,000 - Rs.4,47,620. Consent terms came to be signed between the parties on 18/6/2007. The society passed a resolution and today an affidavit has been placed before this court signed by all the Managing Committee members who are also present before the court. As per the affidavit, an additional amount of Rs.2,00,000/- by Pay Order drawn over Syndicate Bank on 30/10/2007 has been handed over to the learned counsel for the

society. In addition, a post dated cheque (15/1/2008) in the sum of Rs.1,27,380/- drawn over the Syndicate Bank and in favour of the complainant-society has also been handed over to the learned counsel for the society.

4. The petitioner no.1 who is present before the court has made a solemn statement through his counsel that the post dated cheque shall be honoured on the due date. In the affidavit filed by the society, there is an express resolution giving consent for quashing the proceedings in C.C. No. 142/PW/2005 on the file of the learned Metropolitan Magistrate at Andheri, Mumbai. Ms. Gajare the learned APP on taking instructions stated that the police machinery was required to spend considerable time and money and the fact that the petitioner no.1 was absconding for almost three years had put considerable burden on the investigating agency and, therefore, the petitioner no.1 ought to be saddled with costs.

5. As per the order dated 17/8/2007 passed by the learned Metropolitan Magistrate under Section 457 of

Cr.P.C. an amount of Rs.4,47,620/- has been released temporarily. I am, therefore, satisfied that the society's money has been substantially recovered and a post dated cheque of Rs.1,27,380/- has been handed over to the learned counsel for the society today, it would appropriate that as per the consent terms between the parties, the pending case is brought to an end without trial and this would be in the interest of all the concerned, including the investigating agency, by invoking the powers under Section 482 of Cr.P.C.

6. Hence, by consent of the complainant-society, this petition is allowed in terms of prayer clause (c). The order passed by the learned Metropolitan Magistrate, Andheri, Mumbai on 17/8/2007 in favour of the complainant-society regarding release of the amount of Rs.4,47,620/- is hereby confirmed. By way of costs the petitioner no.1 shall deposit an amount of Rs.5000/- with the Registry of this court by 1st November, 2007 in cash.

(B.H. Marlapalle,J.)